

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

180-Day Exp. Date: February 25, 2007

February 9, 2007

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) MO-3376 for Kuleana Land Use Single Family Residence and Sustainable Agriculture located at Kiaoao, Wailau Valley, Halawa, island of Molokai, TMK: (2) 5-9-005:007

**APPLICANT/
LANDOWNER:** Linda Dunn

AREA OF PARCEL \approx 0.58 acres

USE: \approx 7,200 ft²

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE

The subject area exists on the windward side of the island of Molokai on the eastern side of the remote Wailau Valley in the ahupuaa of Halawa. Documentation provided by the applicant identified this land, Kiaoao, as Royal Patent 2304, Land Commission Award (LCA) 10869 to Puhili, who identified the use of the land as a house lot with lo'i (Exhibit 1 & 2).

Kiaoao is approximately 1200 feet from the shoreline with steep privately owned cliffs to the east; State of Hawaii and private property to the south; private properties to the west; and private properties and the rocky beach beyond to the north. The unimproved parcel is approximately (\approx) 313' x 106' and lies within the Resource subzone of the Conservation District. The eastern section consist of two large former loi defined by tumbled rock walls with a remnant of an awai running across the western end of the

former loi. There is about a six foot drop to Kahawaiiki Stream that runs through the western section of the parcel (**Exhibit 3, 4 & 5**).

According to the applicant, the valley is an amphitheatre shaped depression with high pali on three sides and the rocky shoreline to the north. Access to the property is by boat and an existing trail from the shore or by an unmaintained trail from the south.

The parcel is used as a temporary campsite by the landowner. Hunters and hiihiiwai pickers utilize the stream area as they travel upstream to the public hunting areas. Hunters, hikers and fisherman currently use Wailau Valley with seasonal camping on the shoreline. There are three permitted structures in the valley: 2 SFR's and 1 recreational cabin. The limited activities in the valley consist of subsistence hunting and fishing.

The proposed site is currently covered with dense vegetation consisting mostly of Polynesian introduced hau, and exotics such as yellow ginger, clydemia with bamboo on the west side of the stream, in addition to small surubs and goat weed. Introduced birds and the endemic auku'u and kolea have been sighted in the valley. Introduced mammals such as deer, mongoose, rats, mice and feral cats and the occasional lost hunting dog have been observed on the parcel. Wild pigs have been observed in the valley. Hawaiian damselflies are abundant in the valley. O'opu, some prawns and a few hiihiiwai are present in the nearby Kahawaiiki stream. It is believed that there are no threatened or endangered flora and fauna in the project area (**Exhibit 6 & 7**).

The parcel is defined by several partially tumbled stonewalls and a partially intact auwai running through the center of the parcel. The walls define former taro lo'i. An archeological survey was done on the entire parcel in June 2004 and notes the auwai, five agricultural terraces and possibly the habitation terrace (**Exhibit 8**).

PROPOSED USE

The proposed Single Family Residence consists of a one-story cedar wood 14' x 14' structure containing a 8' x 14' loft area with an attached 14' x 14' cedar wood deck raised four feet above grade post on pier construction. Footings will extend $\approx 18''$ below the surface. Associated improvements include a self-composting toilet, catchment water system, solar and propane cooking equipment and an adjacent greywater infiltrator system. In addition, a small-contained garden for personal consumption is also proposed.

The proposal meets the Conservation District Single Family Residential Standards. The SFR shall be set back a minimum of 40' all around, has a developed area (main structure, loft, deck) of 504 ft², a maximum height of 18'8", containing one kitchen of a solar oven, propane stove and sink on the deck of the SFR. The wooden cedar structure shall be painted earth tones or compatible with surroundings with a neutral colored roof. The wastewater systems shall be a Department of Health approved grey water infiltrator and composting toilet (**Exhibit 9, 10, 11 & 12**).

The water catchments system will consist of two 55-gallon barrels attached to the gutter of the SFR. A double size sink and freestanding shower attached to the greywater infiltrator system shall be on the deck of the SFR. A SunMar non-electric waterless self-composting toilet is also proposed. Lighting will be with solar rechargeable battery operated lanterns. An organic garden will contain non-propagating varieties of vegetables and fruit for personal consumption. All improvements will be a minimum of 100' from Kahawaiiki Stream.

All work shall be done by hand including trenching for the wastewater system. The existing vegetation shall be cut back for the house site. There will be no grading, grubbing or tree removal. The rest of the parcel shall remain as is. All materials will be slung in by helicopter and no heavy equipment will be brought into the valley. The applicant has corresponded with the adjacent landowners notifying them of the proposal. Other than getting a survey of the subject property to prevent encroachment, there were no objections to her proposal.

Staff notes and has discussed with the applicant that there is no public infrastructure or services; access is poor via boat over potentially rough seas or over an unmaintained trail; and there is a concern for the applicant's safety and welfare. Staff notes the applicant is well aware of the remoteness and limitations of the area. As stated in the Environmental Assessment, "The applicant is willing to accept these limitations and be responsible for her own health and safety." Furthermore, the applicant shall be acquiring a solar powered satellite phone for communication in the case of extreme emergency.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Aquatic Resources, Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Maui District Land Office, Historic Preservation; and the **County of Maui**: Department of Planning and the Molokai Planning Commission. In addition, the application and Environmental Assessment was also sent to the nearest public library, the Molokai Public Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following agencies:

STATE OF HAWAII

DEPARTMENT OF HEALTH (DoH)

Wastewater Branch

The project is located in the Critical Wastewater Disposal Area (CWDA) as determined by the Maui County Wastewater Advisory Committee where no new cesspools are

allowed. The DoH granted construction approval for an Individual Wastewater System (IWS) serving the subject property on May 31, 2006. The treatment IWS consisted of a composing toilet and a trench (Gravel less chambers) for gray water disposal. Per HAR requirements the IWS must be installed by a licensed contractor, inspected by the design engineer and authorized in writing by the DoH before being placed in use. Recommend this as a requirement of CDUP conditions. All wastewater plans must conform to applicable provisions of the DoH, Chapter 11-62, HAR. Applicant should adhere to applicable Standard comments for land use found online. We reserve the right to review the detailed wastewater plans for conformance.

APPLICANT'S RESPONSE

As stipulated by the DoH, Wastewater Branch, the approved IWS shall be installed by a licensed contractor, inspected by a design engineer and reviewed by the Maui County Wastewater Division.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL (OEQC)

In the final EA, print on both sides of the page and list all required permits and approvals for this project and the status of each.

APPLICANT'S RESPONSE

The final EA will be printed on 2 sides and all required permits, approvals and status shall be included with the final EA.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA does not object to a finding of no significant impact for the proposed project, nor to the issuance of the CDUP. The care the applicant has taken in complying with environmental and cultural laws is noted along with the applicant's plan to locate the proposed structure away from existing cultural structure, such as the remnants of loi walls and the applicant's willingness to allow access through the property for the practice of native Hawaiian traditional and customary rights.

DEPARTMENT OF LAND AND NATURAL RESOURCES

AQUATIC RESOURCES

No comments

ENGINEERING

The project site is located in Zone A6. The National Flood Insurance Program (NFIP) regulates developments within Zone A6. The project must comply with the rules and regulations of the NFIP presented in Title 44, Code of Federal Regulations (44CFR)

whenever development within a Special Flood Hazard Area is undertaken. 44CFR indicates the minimum standards set forth by the NFIP. Your community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards.

APPLICANT'S RESPONSE

I have been in contact with the NFIP Coordinator and the Maui County NFIP for clarification. It has been determined that the proposed construction is in Flood Zone C, an area of minimal flooding. According to Maui County NFIP, the project as outlined in the EA meets the appropriate standards for this designation.

FORESTRY AND WILDLIFE

No Comments

HISTORIC PRESERVATION

The project has gone through the historic review process, and mitigation has been completed. As submitted in the DEA an agricultural terrace site within the entire project area has been well documented by this approved inventory. In the event that historic resources, including human skeletal remains, are identified during the construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division, Maui Section, needs to be contacted immediately.

APPLICANT'S RESPONSE

Should any historic resources, including human skeletal remains be found during construction activities, all work will cease and the proper authorities shall be contacted.

COUNTY OF MAUI

DEPARTMENT OF PLANNING

The project is not considered development, as it is a single-family dwelling with a valuation not in excess of \$125,000.00. A Flood Development Permit is not required. The project is exempt from the Special Management Area (SMA) permit requirements.

ANALYSIS

After reviewing the application, by correspondence dated August 31, 2006, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR) §13-5-22, P-3, KULEANA LAND USES, (D-1), Agriculture and a single family residence, if applicable, when such land use was historically, customarily and actually found on the property. Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project;

It had been determined that satisfaction of the Special Management Area has been met with documentation dated December 29, 2006, from the County of Maui that states in accordance with the applicable rules...the project is exempt from Special Management Area permit requirements. In addition, a FONSI to the environment was published in the December 8, 2006 Environmental Notice.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. A Kuleana Land Use is an identified land use pursuant to §13-5-22, P-3, KULEANA LAND USES, (D-1), Agriculture and a single family residence, if applicable, when such land use was historically, customarily and actually found on the property. This is a nonconforming land use proposal.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. It had been determined that satisfaction of the Special Management Area has been met with documentation dated December 29, 2006, from the County of Maui which states that the project is exempt from Special Management Area permit requirements.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area or region. There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality. There has been no observable traditional or customary Native Hawaiian practices being exercised on the parcel. Should it be determined that traditional or customary rights are associated with the parcel, the applicant is willing to allow access.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The proposed SFR's footprint shall be less than 400 ft² and approximately a third of the parcel may be disturbed and the remaining portion of the property will continue to remain in its natural condition. There shall be no grubbing or grading or tree removal.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Subsistence hunting, gathering, fishing, camping and hiking will not be impaired as these types of activities take place in other areas of the valley. The limited size and scope of the proposed action will not involve the loss or destruction of any natural resource. The proposed SFR shall not be visible from the shoreline or the

Wailau trail nor to hunters or gathers traveling upstream and is not near any hunting trails.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

There will be no subdivision of land for this proposed project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare. Staff still has general concerns for the applicant regarding the remoteness of the valley. However as stated in the application, "The applicant is willing to accept these limitations and be responsible for her own health and safety."

DISCUSSION

Pursuant to §13-5-37, HAR Nonconforming uses. (a) This chapter shall not prohibit the continuance of, or repair of non-conforming uses as defined. (b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single family residence.

Pursuant to §13-5-30 sufficient documentation was received from the applicant to define the subject parcel as a kuleana parcel that was actually used for residential and agriculture purposes. What the applicant is proposing, a single-family residence and sustainable garden, is consistent with this nonconforming kuleana land use. The proposed SFR's footprint shall be less than 400 ft² and approximately a third of the parcel may be disturbed and the remaining portion of the property will continue to remain as is, in its natural condition. The proposal meets the Conservation District Single Family Residential Standards.

All work shall be done by hand including trenching for the wastewater system. The existing vegetation shall be cut back for the house site. There will be no grading, grubbing or tree removal. All materials will be slung in by helicopter and no heavy equipment will be brought into the valley.

Staff notes and has discussed with the applicant that there is no public infrastructure or services; there is poor access; and there is a concern for the applicant's safety and welfare. Staff notes the applicant is well aware of the remoteness and limitations of the area. As stated in the Environmental Assessment, "The applicant is willing to accept these limitations and be responsible for her own health and safety."

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for Kuleana land use consisting of a 392 square foot Single Family Residence that includes a main house with a loft; a deck; associated improvements and an organic garden with non-propagating varieties of vegetables and fruit for personal consumption located at Kiaoao, Wailau Valley, Halawa, island of Molokai, TMK: (2) 5-9-005:007 subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) §11-60.1-33, Fugitive Dust; Chapter 11-46, Community Noise Control; and Chapter 11-62, Wastewater;
- 4) The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
- 5) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit
- 6) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- 7) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 8) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the

approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

- 9) The applicant will minimize visual impacts using appropriate house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;
- 10) The applicant shall provide documentation to the Department that identifies legal access to the parcel;
- 11) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 12) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 13) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 14) Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;
- 15) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 16) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the environment;
- 18) Cleared areas shall be re-vegetated within thirty days of the completion of construction unless otherwise provided for in a plan on file with the Department;

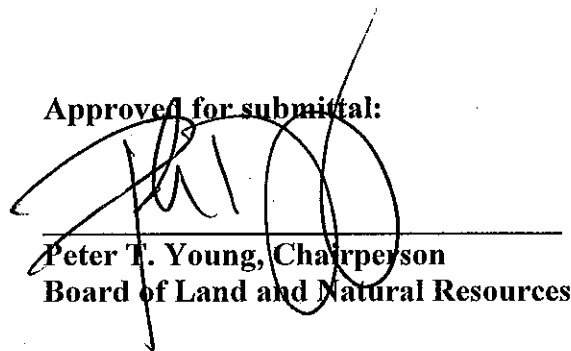
- 19) The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules (Title 13-5);
- 20) Other terms and conditions as may be prescribed by the Chairperson; and
- 21) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Land

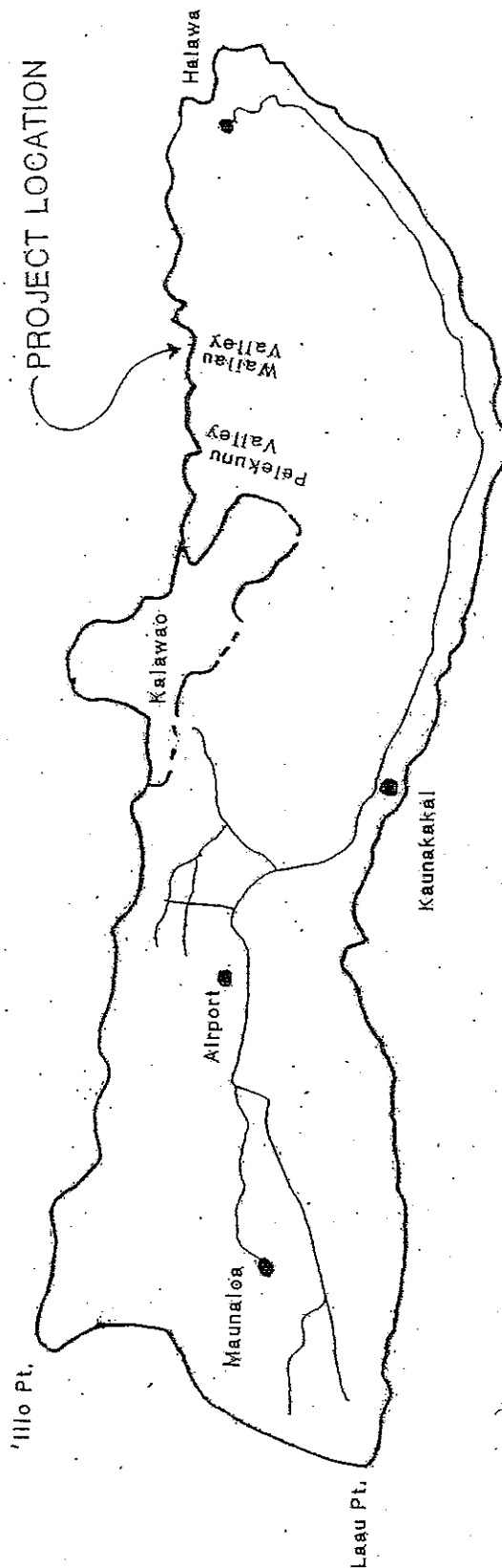
Approved for submittal:



Peter T. Young, Chairperson
Board of Land and Natural Resources

LOCATION MAP

NO SCALE



RESIDENCE FOR LINDA E. DUNN
WAILAU VALLEY, HALAWA, MOLOKAI
T.M.K. 2-5-9-005.007

EXHIBIT 1

Aluku Pau & Co. & Co. W. E. Lee
J. M. Robertson
J. Sheehan
J. H. Smith

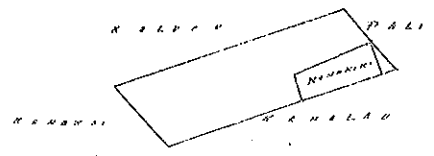
Honolulu Sept. 8, 1852.

File 10,869 Pukiki Mailau Kelohai

Wastan, ili o Keia Kelohai, I hoomaka ana me ka kiki Komoehana o hua aia
 a o hua ana, He. 42' Pih. 1, 61 Kaul. ma ka Kahoehi, alaila He. 71' Ki 4, 75 Kaul. ma
 ko Kahoehi, alaila, He. 42' Ki. 1, 60 Kaul. me ka Pali, alaila, He. 72' Komo. 4, 75 ma ko
 Kahoehi, a hiki i kahi i hoomaka ia. me ia. Hana 840 ananani
 o Loi me ka Komoehi maika o hua Kahoehi.

August 13, 1852.

P. M. Meyer
Surveyor



Aluku Pau & Co. & Co.

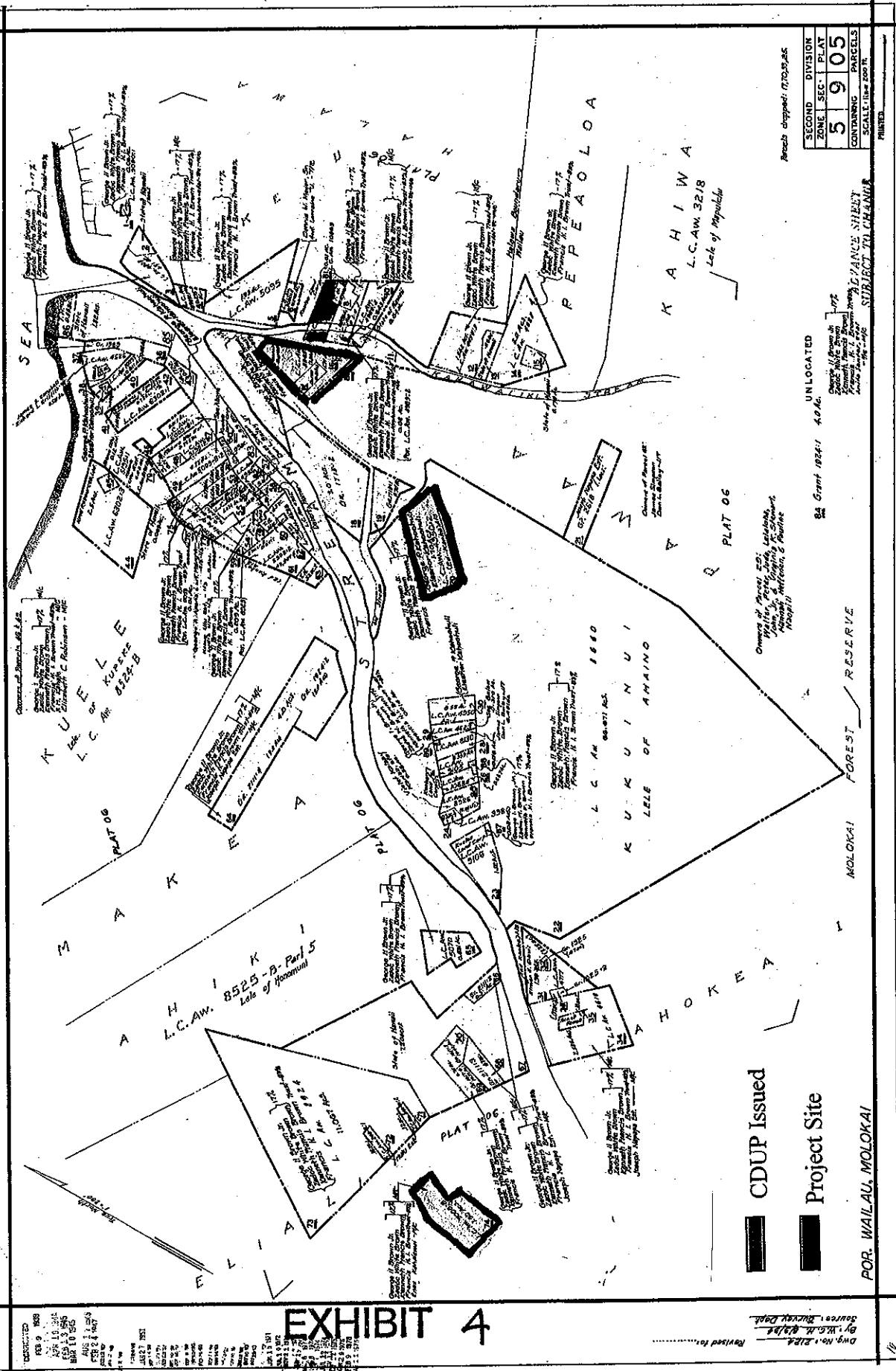
W. E. Lee
J. M. Robertson
J. Sheehan
J. H. Smith

Honolulu Sept. 8, 1852.

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EXHIBIT 3



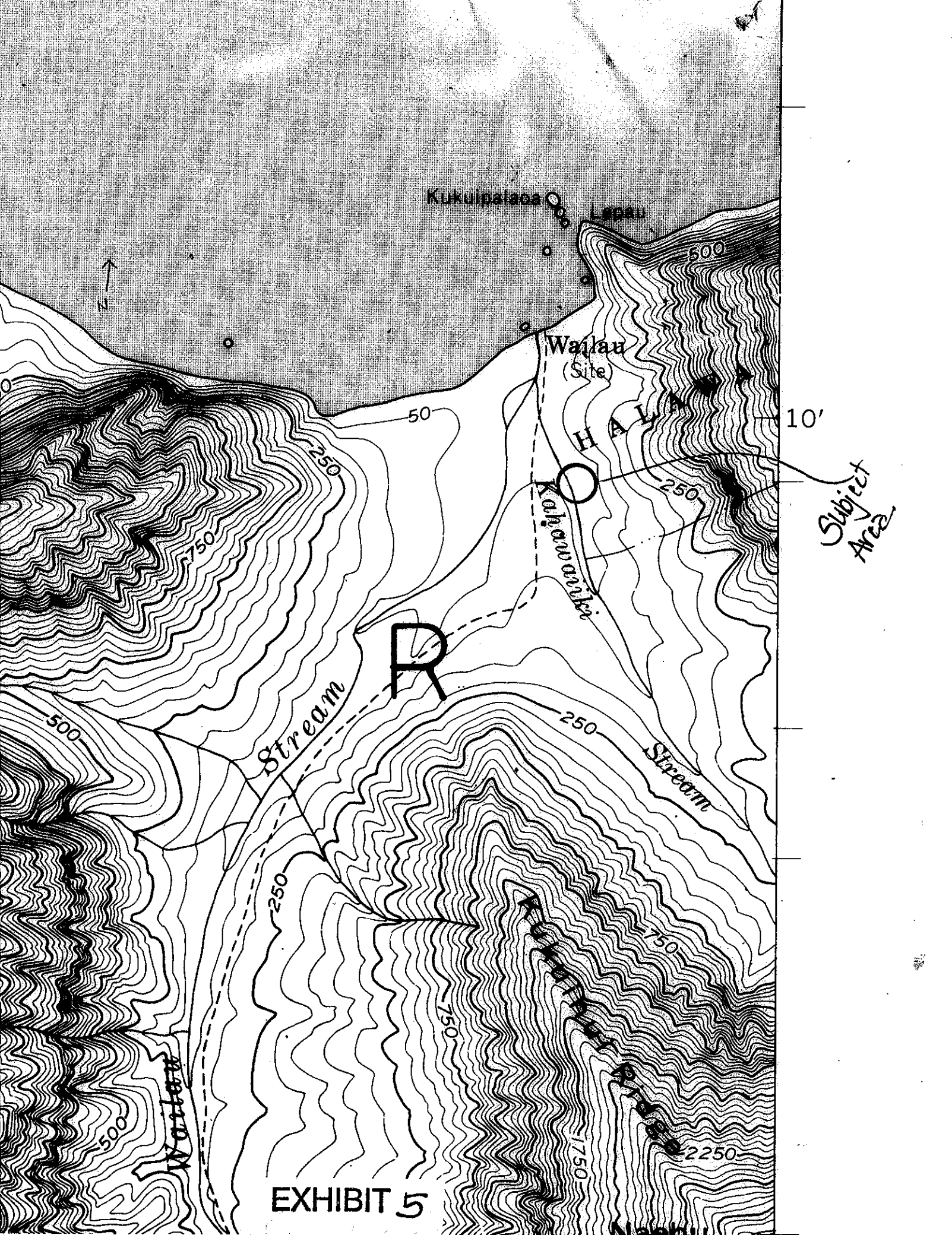
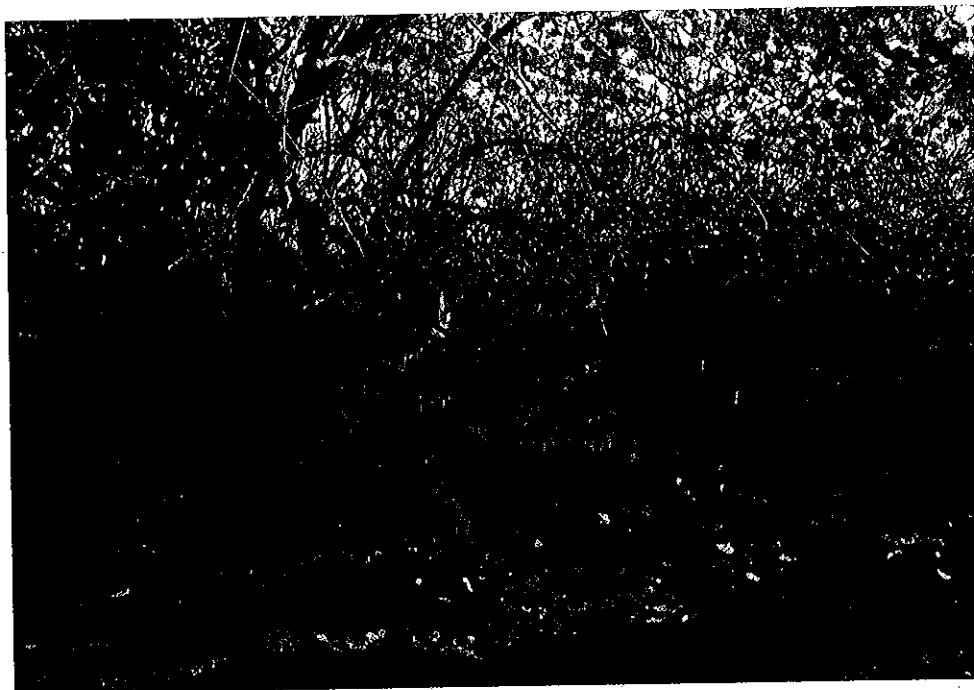
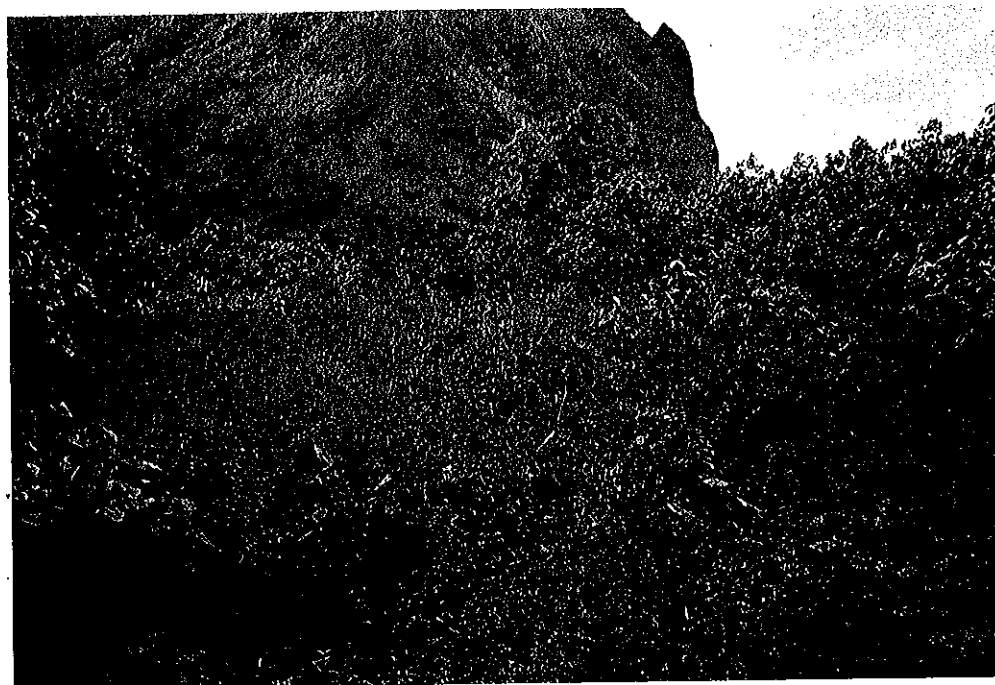


EXHIBIT 5



Stream bank facing NE
in western end of
parcel 100'+ from
proposed construction.



Middle of northern
most terrace, area of
proposed construction
facing west.

RESIDENCE FOR LINDA E. DUNN
WAILAU VALLEY, HALAIVA, MOLOKAI
T.M.K. 2-5-9-005:007

EXHIBIT 6



Partial wall of 'auwai in
western area of parcel.
(to remain undisturbed)

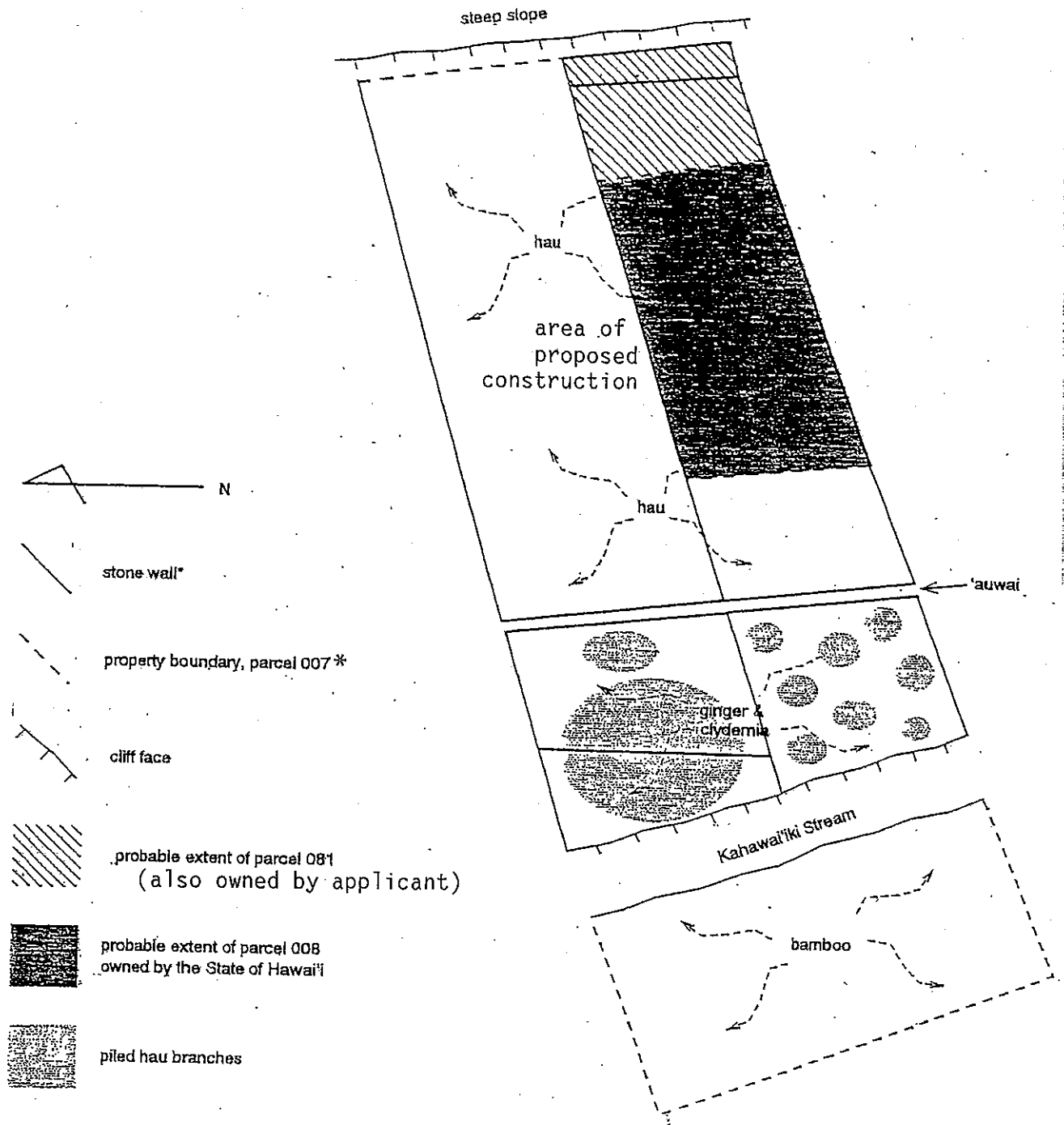


Midwall of parcel,
facing S to southern-
most terrace.
(to remain undisturbed)

RESIDENCE FOR LINDA E DUNN
WAILAU VALLEY, HALAIVA, MOLOKAI
T.M.K. 2-5-9-005.007

EXHIBIT 7

VEGETATION MAP

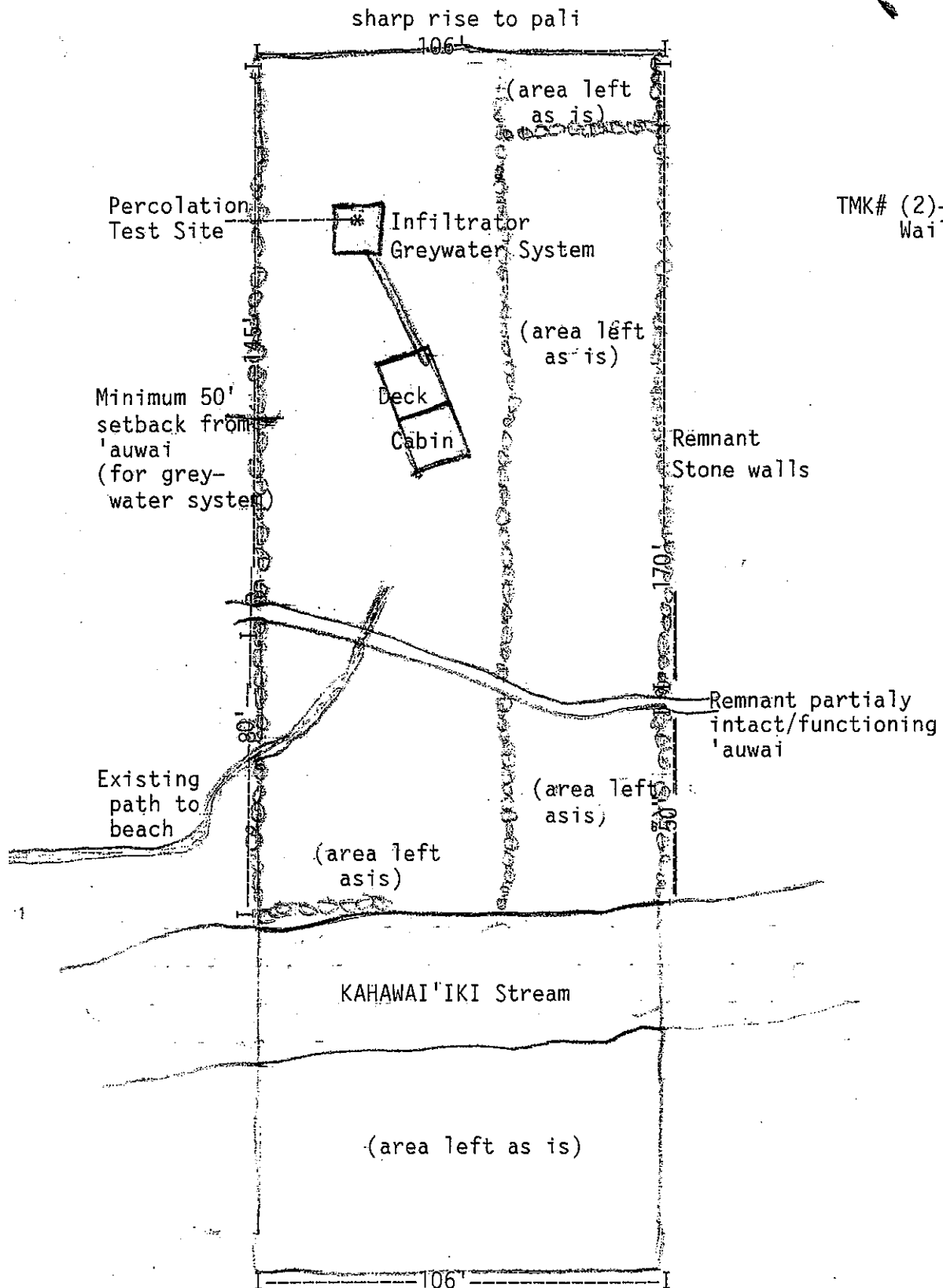


*northernmost and southernmost walls also mark property boundary of parcel 007

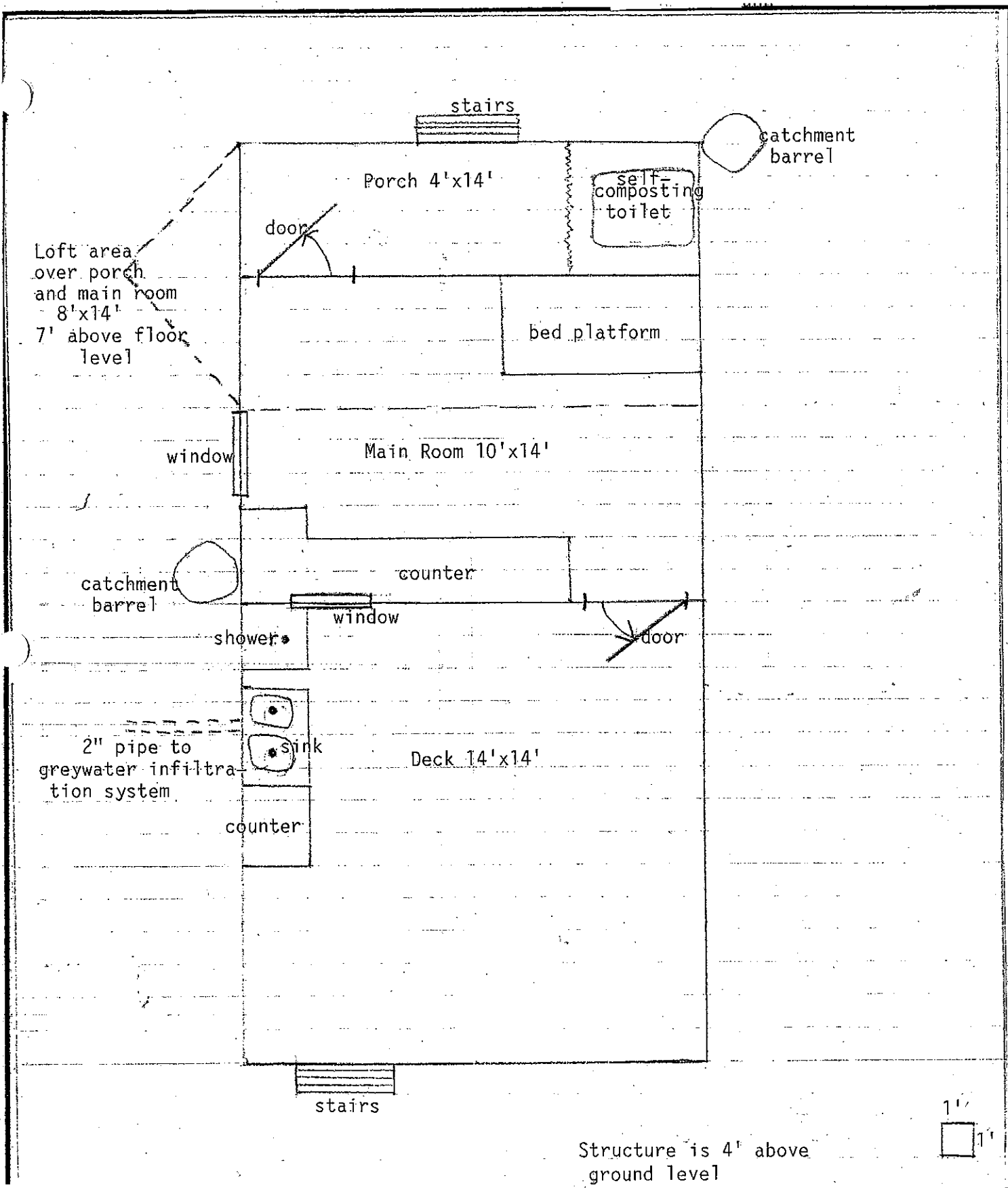
TMK (2)-5-09-005:007 Linda Dunn

Wailau, Moloka'i

CONSTRUCTION PLAN

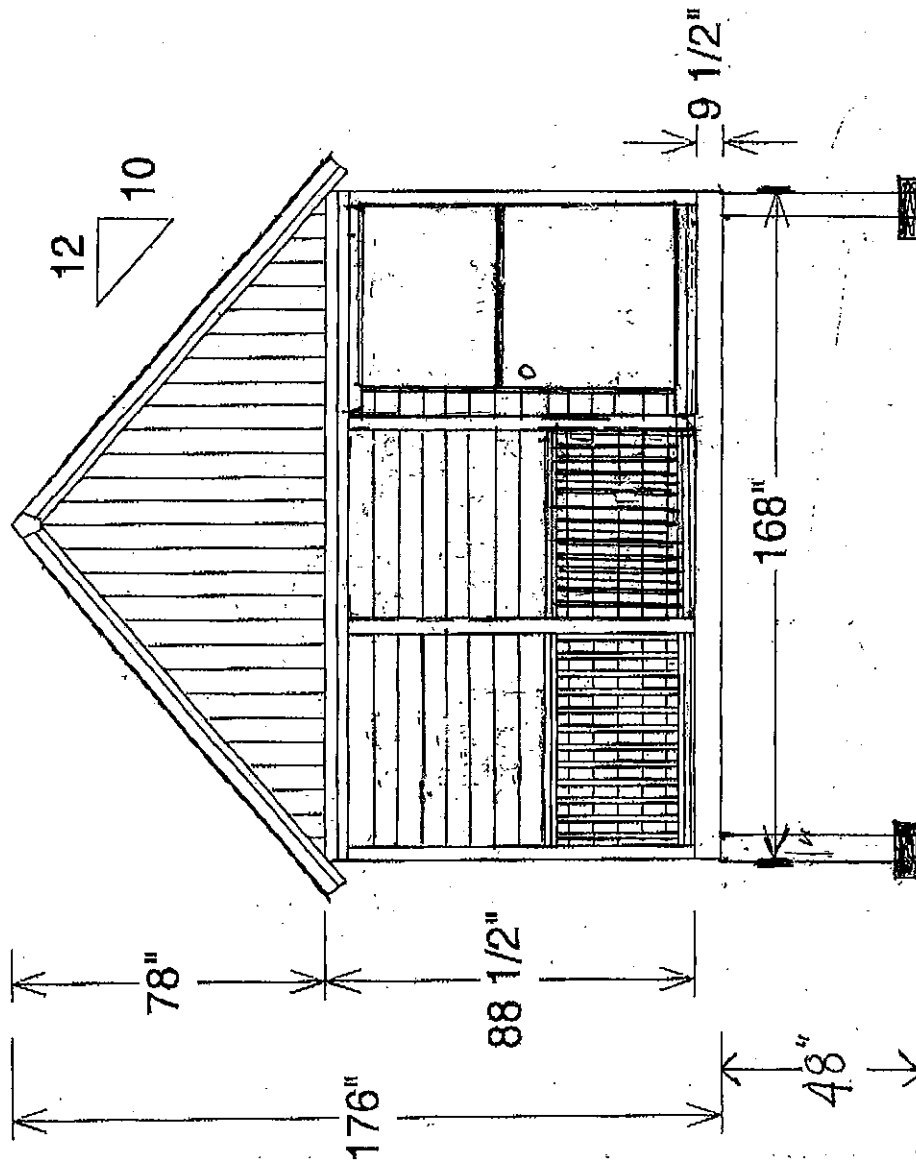


TMK# (2)-5-9-5:007
Wailau, Moloka'i



RESIDENCE FOR LINDA E. DUNN
 WAILAU VALLEY, HALAIVA, MOLOKAI
 T.M.K. 2-5-9-005:007

EXHIBIT 18



Notes: Scale: 1/4" (inch) = 1' (foot)
 Drawn By: DMC
 05/05
 For Linda Dunn
 Wailau' Moloka'i

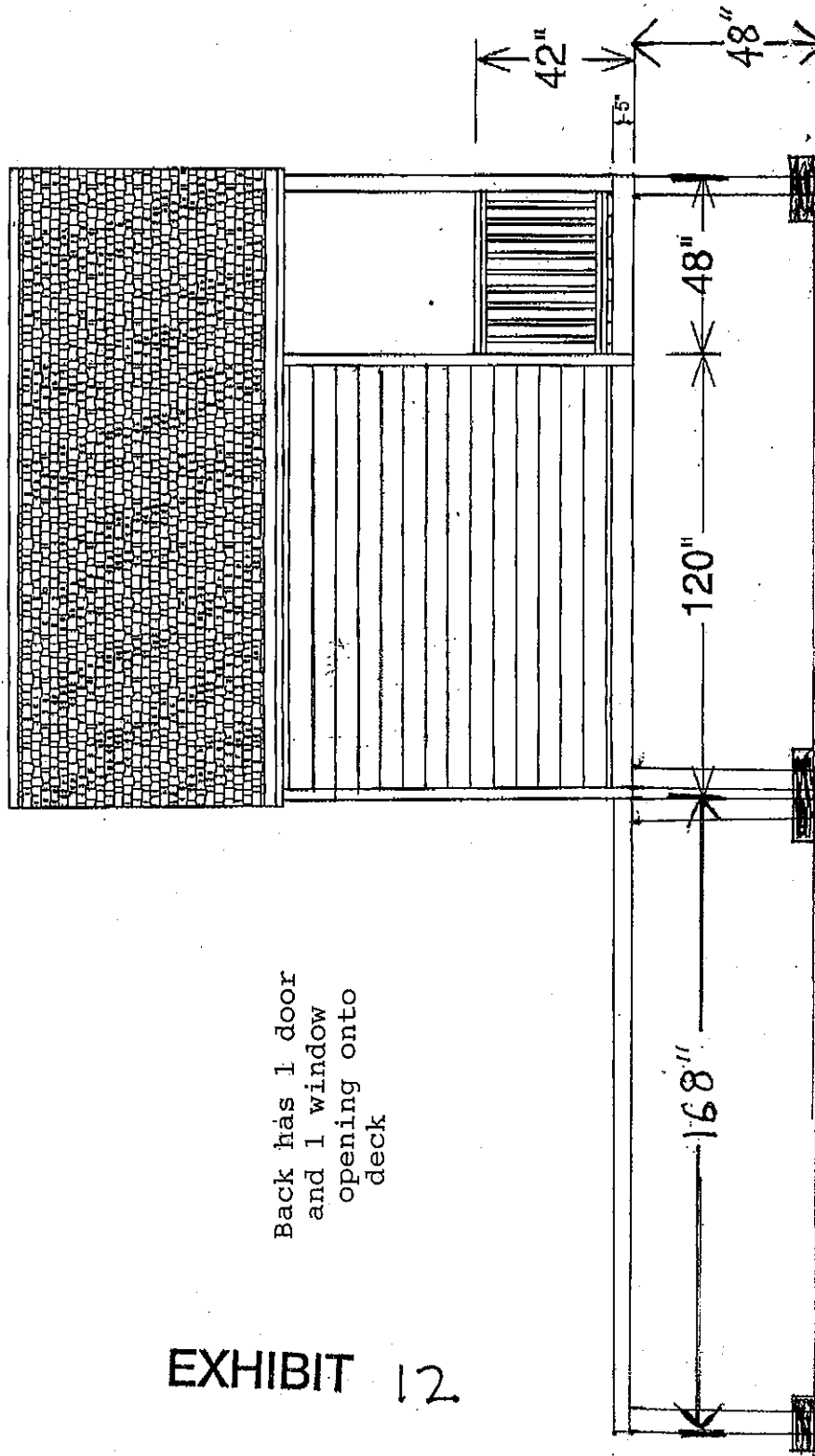
14' X 14'
 Telluride
 Front View

Summerwood
 PRODUCTS
 735 Progress Ave.
 Toronto, M1H 2W7
 Ontario, Canada
 design@summerwood.com
 www.summerwood.com
 A Division of Summerwood Inc.

EXHIBIT 12

Back has 1 door
and 1 window
opening onto
deck

Right side has
1 window



Notes: Scale: 1/4" (inch) = 1' (foot)
Drawn By: DMC
05/05

14' X 14'
Telluride
Side View

Summerwood
PRODUCTS
735 Progress Ave.
Toronto, M1H 2W7
Ontario, Canada
design@summerwood.com
www.summerwood.com
A Division of Summerwood Outdoor Ltd.